IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 191 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKOR MOHMED RAFIK HUSAIN MIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SUDHANSHU PATEL, for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/03/2001

ORAL JUDGEMENT

#. Rule. Mr.Sudhanshu Patel waives service of Rule on behalf of respondents.

#. Heard the learned counsel for the parties.

#. On three grounds, the application filed by petitioner for furlough has been rejected by respondent No.3. First ground is that there is adverse police report against the petitioner. Second is that he was absconding from police custody from 1992 to 1995. Last ground is that the co-accused are absconding.

#. Learned counsel for the petitioner submits that the ground given of police adverse report cannot be relied upon as the petitioner has not been furnished a copy of the adverse police report and he has not been given an opportunity to file his objections against the same.

It is not in dispute that a copy of the adverse police report has not been furnished to the petitioner.

So far as second ground is concerned, the learned counsel for the petitioner submitted that after 1995, the petitioner has enjoyed three times furlough and two times parole leave and on all the five times, he surrendered before the jail authority in time. Last parole leave is enjoyed by him in the month of April, 2000, and he surrendered in time without any untoward incident. It is further contended that for his absconding from the custody, he has already been punished by the court and it cannot be taken to be a ground to deny him due furlough leave in these facts. So far as last ground is concerned, it is contended that it is wholly irrelevant. The petitioner is not concerned with absconding of the co-accused.

#. I find sufficient merits in all the contentions raised by learned counsel for the petitioner. For this absconding of the three years from 1992 to 1995, the petitioner has already been punished by the court and it cannot be taken to be a ground for denial of furlough leave to the petitioner, otherwise, it would amount to double punishment. Otherwise also, this incident has no effect whatsoever in view of the subsequent development which has taken place, i.e. the petitioner has thereafter enjoyed three times furlough leave and two times parole leave and all the time, he has surrendered before the jail authority in time. So far as adverse police report is concerned, a copy of the same has not been given to the petitioner and it cannot be made a ground for denial of furlough leave to the petitioner, unless the petitioner has been given opportunity to make objection against it and consideration tehreof by the authority. So far as last ground is concerned, how far the petitioner can be blamed when he is in no way responsible for absconding of the accused and that too,

to the extent to deny his right of furlough. Further, in Rule 4 of the Bombay Furlough and Parole Rules, 1959, these are not the grounds given for denial of furlough to the prisoner.

#. In the result, this special criminal application succeeds and the same is allowed and the order dated 15.2.2001 is quashed and set aside. The Inspector General, Prisons, Gujarat State, Ahmedabad, is directed to decide the application of the petitioner afresh after giving him a copy of the adverse police report and if the objections are filed by the petitioner against the same, after considering the same and keeping in view this decision of the court, within a period of one month from the date of receipt of writ of this order. Rule is made absolute accordingly with no order as to costs.

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(sunil)